Supreme Court, U.S.
FILED
AUG 30 1991
OFFICE OF THE CLERK

No. 91-191

In The

Supreme Court of the United States

October Term, 1991

SUSAN MURPHY & MARY MURPHY,

Petitioners,

v.

I.S.K.CON. OF NEW ENGLAND, INC.,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Judicial Court Of Massachusetts

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

DAVID M. LIBERMAN
Counsel of Record
2049 Century Park East
Suite 3160
Los Angeles, California 90067
(213) 277-9288

DAVID L. KELSTON
FRIEDMAN & ATHERTON
Nineteenth Floor
28 State Street
Boston, Massachusetts 02109
(617) 227-5540

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the Supreme Judicial Court of Massachusetts correctly held that a cause of action for intentional infliction of emotional distress may not, under the First Amendment, be predicated upon the content of a religious organization's core beliefs and teachings.

2. Whether the Supreme Judicial Court correctly held that the First Amendment requires appellate courts to independently review the record of a case and to reverse any cause of action which may, even in part, have been based upon constitutionally protected practices.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 6

I. TORT LIABILITY FOR EMOTIONAL DISTRESS MAY NOT BE PREDICTED UPON THE CONTENT OF RELIGIOUS BELIEFS 8

II. LIABILITY FOR TORTIOUS CONDUCT MAY NOT BE IMPOSED IF THE DEFINITION OF THE TORT GIVEN TO THE JURY ENCOMPASSES CONSTITUTIONALLY PROTECTED AS WELL AS UNPROTECTED CONDUCT 11

CONCLUSION 14

TABLE OF AUTHORITIES

Page

CASES

Bose Corp. v. Consumers Union, 466 U.S. 485 (1984) 12

Epperson v. Arkansas, 393 U.S. 97 (1968) 10

Founding Church of Scientology v. United States, 409 F.2d 1146 (D.C. Cir.) (opinion on rehearing), *cert. denied*, 396 U.S. 963 (1969) 12

Fowler v. Rhode Island, 345 U.S. 67 (1953)..... 11

McDaniel v. Paty, 435 U.S. 618 (1978)..... 10

Murphy v. I.S.C.Con. of New England, Inc., 409 Mass. 842 (1991)..... *passim*

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) 10, 12

Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971)..... 10

Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) 10

Sherbert v. Verner, 374 U.S. 398 (1963) 10

Street v. New York, 394 U.S. 576 (1969) 12

Stromberg v. California, 283 U.S. 359 (1931)..... 12

Thomas v. Review Bd., 450 U.S. 707 (1981).....10, 11

Torasco v. Watkins, 367 U.S. 488 (1961)..... 10

United States v. Ballard, 322 U.S. 78 (1943)..... 10

Wisconsin v. Yoder, 406 U.S. 205 (1972)..... 11

Zorach v. Clausen, 343 U.S. 306 (1958) 10

STATEMENT OF THE CASE

1. Respondent, International Society for Krishna Consciousness of New England, Inc.,[1] is a religious corporation organized in February, 1974, for the purpose of propagating the Krishna Consciousness religion in the New England area. Appendix 87-89.[2] At the time of defendant's incorporation,[3] plaintiff Susan Murphy was living in Pittsburgh, Pennsylvania with her boyfriend, Doug Hewer. A 1161.[4] The two were associated with the Krishna temple located there.

---

[1] For purposes of clarity, respondent will hereinafter be referred to as "defendant" or "ISKCON, N.E." Petitioners will be referred to as "plaintiffs".

[2] Appendix (hereinafter "A") refers to the Appendix filed in the Supreme Judicial Court. A Supplemental Appendix was also filed in the Supreme Judicial Court, which will hereinafter be referred to as "SA".

[3] In May, 1986, plaintiffs moved to amend their complaint to hold defendant liable for allegedly tortious activity preceding its incorporation. The motion was denied by the trial court on August 7, 1986, based upon a finding of undue delay by the plaintiffs, undue prejudice to the defendant, and the legal futility of the plaintiffs' proposed amendment. SA 40-52. The trial court's ruling was upheld by the Supreme Judicial Court. Pet. App. 56; 409 Mass. 842, 864, which is a state law matter not reviewable by the present proceedings. Accordingly, defendant's statement of the case is limited to the post-incorporation period, except where relevant to the current petition.

[4] Susan first met Doug, who had an off-again, on-again relationship with the religion, *e.g.*, A 2418-419, 2436-439, sometime in the summer of 1972. They became girl friend and boy friend that Fall.

In July or August, 1974, Susan and Doug returned to the Boston area to assist Susan's mother, Mary, with a legal problem unrelated to the present case. A 764. At this time, they lived in a rented apartment in Brookline, A 764, and began visiting and participating in the activities of ISKCON N. E.'s temple located in Boston. A 765-67.

After about one month, Susan and Doug moved into the private apartment of Traidas and Pranada, two members of the Boston temple. Susan testified that Traidas was president of the temple at this time. A 807. While living with Traidas she continued to visit the temple and participate in its spiritual programs. She woke up at about 3:00 a.m. to attend early morning worship services, ate breakfast at the temple, and then would return home, coming back to the temple later for various activities, including sewing, making flower garlands, and cleaning. She also attended evening classes on defendant's scriptures. A 807-08.

Susan turned sixteen on August 14, 1974. A 766.

Around September, 1974, Susan and Doug moved into the private apartment of Carol and Larry De Gregory, two other members of the Boston temple. A 809. Susan testified that Larry was the temple's treasurer. A 812. In November, 1974, after moving to another apartment which they were unable to afford, A 1242, the two couples requested permission from ISKCON, N.E.'s president, Adi Kesava, to move into the Boston temple facility. A 814-15, 1242-243.

Adi Kesava told Susan that she could live in the temple if she first obtained her mother's permission, and on the condition that she follow the religion's practices of

a vegetarian diet, no illicit sex, no intoxication, no gambling, and regular attendance at the temple programs. Susan agreed to these conditions and arranged for Adi Kesava to speak to Mary, who, on certain conditions, consented to Susan living in the temple. A 3481-482.

After moving into the temple, Susan and Doug lived separately. A 1243-244, 3969. Apparently unhappy with this arrangement, Doug left the temple a short time later. A 3516-517. Susan, however, remained, and willingly participated in regular chores, rituals, and classes associated with the temple and the practices of Krishna Consciousness. A 1240, 1278-280, 1359, 3861-862.

In December, 1974, or January, 1975, Mary asked Susan to sleep at home on weekends. Susan agreed, but continued to spend most of her time at the temple. A 932-33. Shortly after Susan was formally "initiated" into the religion in January or February, 1975, she began spending every night at her mother's house, although she continued to spend her days at the temple. A 1184, 1187.

In April, 1975, Mary found a letter written by Susan to a friend which alluded to a "plan" by several members of the Boston temple to send Susan to West Germany without Mary's knowledge or consent. Mary summoned Weymouth police officer Henry Vanesse, who informed Susan that she risked legal action if she attempted to run away. Mary also demanded that Susan sever all ties with the defendant's temple. Reluctantly, Susan agreed. A 1461-473, 3008-013.

2. On April 19, 1977, Susan and Mary filed a complaint in the Superior Court alleging nine counts of tortious activity against (1) ISKCON, N.E., (2) a separate

Krishna corporation domiciled in California, and (3) His Divine Grace A. C. Bhaktivedanta Swami Prabhupada, the founder of Krishna Consciousness in the United States. A 29-30. Following extensive pre-trial proceedings in which the California corporation and Swami Prabhupada were dismissed, the case proceeded to trial on May 11, 1987, against ISKCON, N.E. on the following counts: (1) Susan's claim of intentional infliction of emotional distress; (2) Mary's claim of intentional infliction of emotional distress; (3) Susan's claim of intentional interference with the Murphy family structure; (4) Mary's claim of intentional interference with her parental rights; (5) Susan's claim that ISKCON, N.E. breached its duty to adequately provide for her welfare while she was under its care; and (6) Susan's claim that ISKCON, N.E. aided and abetted Doug Hewer in committing assault and battery on her by way of nonconsensual sexual intercourse.

At trial, evidence was presented which, the plaintiffs claimed, established that Susan's experience with the defendant caused her to suffer "post-traumatic stress disorder," a low sense of self-esteem, and an inability to maintain a healthy relationship with men. Additional evidence showed that Susan remained angry with her mother for several months following her departure from the temple, A 1083, and that Susan expressed a desire to return to her chosen religion. Susan and Mary's relationship began to improve when, after about six months, Susan decided that she no longer wanted to be a member of the religion or visit the temple. A 1081.

On June 16, 1987, the jury found for the plaintiffs on four causes of action.[5] It awarded Susan $210,000 for the intentional infliction of emotional distress, and $30,000 for ISKCON, N.E.'s failure to provide for her welfare ($10,000 of which was attributable to defendant's failure to protect her from assault and battery by third persons). Mary received $350,000 for the intentional infliction of emotional distress, and $20,000 for the intentional interference with her parental rights. A 4261-263. The total award of $610,000 was more than doubled because of statutory interest from 1977. A 4315.

3. On appeal, defendant challenged each aspect of the verdict against it under the First Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment. Defendant also employed a broad-based attack on the entire proceeding under the First Amendment, asserting that the nebulous nature of the claims, the inflammatory character of the evidence submitted in support of those claims, and the intensive and hostile scrutiny of Krishna religious beliefs and practices invited the jury to punish defendant for its unconventional and unpopular religious beliefs.

The Supreme Judicial Court (SJC), sitting en banc, vacated the judgments against the defendant for the claims of intentional infliction of emotional distress, and ordered entry of judgment for the defendant on those counts. Pet. App. 5, 409 Mass. at 844. The SJC found that

---

[5] Susan's claim for intentional interference with her family structure was dismissed in connection with defendant's motion for a directed verdict. A 4051-054.

those claims were impermissibly predicated on the content of defendant's religious beliefs and teachings, in that plaintiffs were permitted to extensively suggest to the jury that "exposure to the defendant's religious beliefs was sufficient to cause tortious emotional damage and to separate Susan from her mother." Pet. App. 29-30, 409 Mass. at 853-54. This, the SJC concluded, forced the defendant "to choose between censoring its religious scriptures to remove material which may be offensive to contemporary society and paying for damages for the privilege of maintaining unpopular religious beliefs" Pet. App. 32-33; 409 Mass. at 855, a result precluded by the First Amendment.

Because of the difficulty in segregating defendant's "constitutionally protected religious beliefs from conditionally protected religious activity and from conduct outside the scope of constitutional scrutiny" Pet. App. 43-44, 409 Mass. at 859, the SJC, without further discussion , remanded for retrial plaintiffs' remaining claims for intentional interference with parental rights, breach of duty of care, and vicarious liability for assault and battery.

REASONS FOR DENYING THE WRIT

Plaintiff, Susan Murphy, a former adherent of the Krishna Consciousness religion, sued the temple where she lived for a brief period of time, claiming that the religious beliefs which she learned from defendant's scriptures and other devotees living in the temple caused her severe emotional distress. Her mother, plaintiff Mary

Murphy, also sued the temple, claiming that she too suffered emotional distress because of her daughter's conversion and adherence to a religion of which she came to disapprove.

The trial lasted six weeks. During that time, plaintiffs presented extensive evidence of ISKCON, N.E.'s religious beliefs and practices, which the jury ultimately found wrongful. These beliefs and practices included reincarnation, *karma*, detachment from the material world, the role of women in the religion, vegetarianism, and chanting the names of God.[6]

The SJC steadfastly refused to be drawn into the theological thicket created by plaintiffs at trial. Characterizing the lower court proceedings as a "heresy trial," the SJC emphasized that the issues raised by plaintiffs regarding defendant's religious beliefs and practices have "no place in the courts of this Commonwealth." A 32, 409 Mass. at 855.

For the reasons discussed below, this Court should also decline plaintiffs' invitation to become embroiled in a controversy over the propriety and impact of religious beliefs, which are more appropriately the subject of a "theological or academic debate" *id.* than adjudication in a secular court of law.

---

[6] Hare Krishna, Hare Krishna, Krishna Krishna, Hare Hare/ Hare Rama, Hare Rama, Rama Rama, Hare Hare.

I. TORT LIABILITY FOR EMOTIONAL DISTRESS MAY NOT BE PREDICTED UPON THE CONTENT OF RELIGIOUS BELIEFS.

It is undisputed that plaintiffs' two primary causes of action for intentional infliction of emotional distress are premised exclusively on ISKCON, N.E.'s religious beliefs.[7] At trial, Susan testified that prior to her involvement with ISKCON, N.E., she learned "from the devotees" that the position of women in the Hare Krishna religion is subservient to men. A 672. Then, as the centerpiece of her testimony, she spent over half a day on the witness stand reading passages from the *Srimad Bhagavatam*, one of ISKCON, N.E.'s primary scriptures, A 2156-157, concerning the roles of men and women in the Krishna religion.[8] Specifically, Susan selected 50-60 verses

---

[7] Plaintiffs acknowledge that ISKCON, N.E.'s religious beliefs were "exceedingly relevant to the issues in the case. The defendant's teachings were one of the means by which defendant committed its tortious conduct." Pet. Br. at 47.

[8] Plaintiffs represented before trial that ISKCON, N.E.'s religious beliefs would not form the basis of liability. SA 2. Immediately prior to the presentation of plaintiffs' evidence, however, it became apparent that defendant's religious beliefs would form the centerpiece of plaintiffs' case. Accordingly, defendant filed a motion *in limine* to exclude "passages from the scriptures . . . religious pictures of various sorts . . . sermons . . . " A 495. In response, plaintiffs sought the admission of "scriptural teaching concerning sub[jugation] of women." A 497. While the trial court initially took a "dim view of admitting such evidence," *id.*, it subsequently denied defendant's motion to exclude "evidence regarding the teaching of Krishna religion, concerning the respective roles of men and women." A 664-65; *see also* A 94, 495, 946-56.

out of 1200 which she had studied, and presented 20 directly to the jury. A 1230. This testimony took the form of Susan being shown specific scriptural passages by her attorney, and then being asked if she could "recall being taught that text at the defendant's temple in Boston in 1974 and 1975." *E.g.*, A 995. If she answered affirmatively, she would then read or describe the particular portion of the text, and would discuss anything else she was "taught . . . supplementing in addition to the exact words that [she] just read with respect to this verse." A 997. Plaintiffs' expert, Dr. Zinberg, in turn, later testified that Susan's psychological reaction to these teachings caused her to lose self esteem and suffer emotional distress. A 2800-802. The theme established by reading from the scriptures was then argued to the jury as the primary predicate for liability and damages. A 4101.

In a similar vein, Mary Murphy's cause of action for intentional infliction of emotional distress is based upon her unhappiness over Susan's conversion to and practice of Krishna Consciousness. Thus, Mary testified at trial that her emotional distress began with Susan's initial contact with Krishna consciousness in 1972, A 2817, and continued years later while Susan was living part-time at home. A 2823. Even during the six to eight weeks after Susan completely severed her relationship with ISKCON, N.E. in 1975, Mary was emotionally disturbed over Susan's "chanting, wearing beads, [and] announcing her commitment to Krishna consciousness." A 2826. Dr. Zinberg then testified that the cause of Mary's emotional distress from the early 1970s through the 1980s was her fear that Susan might return to Krishna Consciousness, A 2825-832, which he reiterated as part of his prognosis for Mary. A 2844.

Both of plaintiffs' causes of action for intentional infliction of emotional distress, therefore, are squarely premised on the content of ISKCON, N.E.'s religious beliefs. The First Amendment, however, prohibits all "governmental regulation of religious *beliefs* as such." *Sherbert v. Verner*, 374 U.S. 398, 402 (1963). The government may not compel affirmation of religious belief, *see Torasco v. Watkins*, 367 U.S. 488 (1961), impose special disabilities on the basis of religious views or status, *e.g., McDaniel v. Paty*, 435 U.S. 618 (1978), take sides in controversies over religious authority, dogma, or theory, *e.g., Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Zorach v. Clausen*, 343 U.S. 306 (1958), or become involved in issues requiring secular courts to become "arbiters of scriptural interpretation." *Thomas v. Review Bd.*, 450 U.S. 707, 715 (1981).

Nor may the government punish the expression of religious doctrines it believes to be false, unhealthy, or coercive. *United States v. Ballard*, 322 U.S. 78 (1943); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). "Freedom of thought, which includes freedom of religious belief, is basic in a society of free men . . . . It embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our constitution." *Ballard*, 322 U.S. at 86.[9]

---

[9] As noted by the SJC, A 37, n. 11, 409 Mass. at 857, n. 11, this is particularly true when the expression of religious beliefs

(Continued on following page)

Religious adherents, therefore, may not be required to show that their beliefs are conventional or socially acceptable, *Wisconsin v. Yoder*, 406 U.S. 205, 225 (1972), or that they adopted those beliefs by a process that is "acceptable, logical, consistent, or comprehensible to others." *Thomas*, 450 U.S. at 714.

Yet, as noted by the SJC, the trial court required "the defendant . . . to do what the First Amendment has forbidden; it has been forced to attempt to prove to a jury that the substance of its religious beliefs is worthy of respect. " A 32, 409 Mass. at 854.

For this reason, the SJC was constitutionally justified in reversing the judgments for intentional infliction of emotional distress.

II. LIABILITY FOR TORTIOUS CONDUCT MAY NOT BE IMPOSED IF THE DEFINITION OF THE TORT GIVEN TO THE JURY ENCOMPASSES CONSTITUTIONALLY PROTECTED AS WELL AS UNPROTECTED CONDUCT.

As shown above, most of the evidence presented to the jury concerned protected religious beliefs, practices,

---

(Continued from previous page)

occurs as part of a regularly scheduled program in the confines of defendant's place of worship. "[It is not] in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings. Sermons are as much a part of a religious service as prayers." *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953).

and activities.[10] On this basis, the SJC correctly recognized that it had a constitutional "duty to conduct an independent review of the record of the trial below" A 19, 409 Mass. at 849; *see Bose Corp. v. Consumers Union*, 466 U.S. 485, 499 (1984) (appellate courts have obligation to make independent examination of the record to ensure that judgment does not intrude on First Amendment rights), and to reverse any cause of action which may have rested, even in part, on constitutionally protected grounds. *Id.* at 20, 409 Mass. at 850; *see Founding Church of Scientology v. United States*, 409 F.2d 1146, 1164 (D.C. Cir.) (opinion on rehearing), *cert. denied*, 396 U.S. 963 (1969).

It is well established that neither criminal nor civil liability may be imposed on the basis of conduct that includes constitutionally protected speech. *E.g., Street v. New York*, 394 U.S. 476, 485-90 (1969); *Stromberg v. California*, 283 U.S. 359 (1931). In *NAACP v. Claiborne Hardware Co.*, for example, the evidence showed that participants in an NAACP-led boycott of commercial businesses in

---

[10] During trial, defendant vigorously objected to the admissibility of passages from its sacred scriptures and, in general, to evidence concerning the role of women in the religion. A 94, 495, 664-65, 946-56. The court overruled these objections, holding the passages relevant to prove Susan's emotional distress: "If she would like to testify as to certain passages that were taught to her . . . and which will later be testified to [by the expert] as bearing upon emotional distress . . . or psychological damage, then they are admissible as being relevant." A 963. The court also held the religious scriptures admissible as relevant to Mary's claim of interference with her custodial rights, on the theory that defendant would be liable if it offered Susan religious instruction disapproved of by her mother. A 950, 952-53.

Claiborne County, Mississippi, had committed acts of violence that fell outside the protection of the First Amendment. 458 U. S. at 916. This Court held, however, that "the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability." *Id.* at 916-17. It reversed the damages against the NAACP and its co-defendants in their entirety, finding that the pleadings, arguments of counsel, and jury instructions had not adequately defined which elements of the alleged injury were "proximately caused by unlawful conduct" and which resulted from constitutionally protected activity. *Id.* at 917-18. The same principle, as extended to religious conduct and beliefs, supports the SJC's decision to reverse plaintiffs' claims for intentional infliction of emotional distress, and to remand the remaining claims for a retrial.

Indeed, defendant repeatedly argued to the trial court that because of its unpopularity in the community, *see, e.g.*, A 77-80, 101-03, 232, there was a danger that the jury could find liability solely on the basis of its religious beliefs and actions. *E.g.*, A 98-99, 106-07, 108-09. The trial court, however, disregarded defendant's fears, and rejected its request at the end of trial that the court identify for the jury in its instructions those facts which could properly form the basis of liability. A 4052-054. Instead, the court gave a generalized instruction to the jury that invited it to arbitrarily pick and choose among defendant's beliefs, practices, and actions in imposing liability for practices which the jury subjectively considered wrongful. A 4177-184. For this reason, the SJC aptly noted that the trial court "exacerbated the problem by erroneously instructing the jury regarding the extent of

the free exercise protections afforded by the First Amendment." A 37-38, 409 Mass. at 857.

The SJC was thus correct in conducting an independent review of the record and in reversing and remanding those claims which were based in whole or part upon constitutionally protected beliefs and practices.

CONCLUSION

This Court should refuse to grant a Writ of Certiorari to the Supreme Judicial Court of Massachusetts.

August 30, 1991

Respectfully submitted

DAVID M. LIBERMAN
Counsel of Record
2049 Century Park East
Suite 3160
Los Angeles, California 90067
(213) 277-9288

DAVID L. KELSTON
FRIEDMAN & ATHERTON
Nineteenth Floor
28 State Street
Boston, Massachusetts 02109
(617) 227-5540

Counsel for Respondent